

ACTION Housing, Inc.  
Americans for Financial Reform  
Consumer Action  
Center for Responsible Lending  
Empowering and Strengthening Ohio's People (ESOP)  
Fair Housing Center of Central Indiana (FHCCI)  
Housing and Education Alliance  
Housing Equality Law Project (HELP)  
Montana Fair Housing  
National Association of Consumer Advocates (NACA)  
National Consumer Law Center (on behalf of its low-income clients)  
National Fair Housing Alliance  
National Housing Law Project  
National Housing Resource Center  
New Jersey Citizen Action  
Public Citizen  
U.S. PIRG

April 2, 2015

Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1275 First Street, NE  
Washington, DC 20002

Re: Housing advocates' comment on the CFPB's arbitration study and rulemaking authority

Dear Director Cordray:

The undersigned organizations commend the Consumer Financial Protection Bureau's (Bureau or CFPB) completion of its study on predispute binding mandatory arbitration in consumer financial agreements, as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). As advocates of fair lending in housing, we know how much borrowers of residential mortgage loans and home equity lines of credit have benefited from the recent reforms restricting arbitration clauses in their mortgage loan documents. Now that the arbitration study is complete, we encourage the Bureau to expand these protections beyond mortgage lending by issuing a rule that prohibits mandatory arbitration for all consumer financial services and products under its jurisdiction.

Mortgage reforms are a prime example of the need for and benefits of prohibitions of mandatory arbitration clauses for consumer products. Prior to the mortgage reforms of the past decade, mortgage borrowers faced being forced into a private 'justice' system by mandatory arbitration clauses. In arbitration, homeowners were deprived of valuable legal protections, while unscrupulous lenders benefited from the secret nature of the

proceedings.<sup>1</sup> Unfair predatory lending tactics that imposed unfair or abusive loan terms on borrowers, such as excessive fees and prepayment penalties, would remain unknown to the public for some time because lenders could avoid responding to allegations in open court.

In light of the concerns raised about mandatory arbitration in mortgages, in 2004, Fannie Mae and Freddie Mac initiated a policy to no longer invest in mortgage loans with mandatory arbitration clauses. Back then, Freddie Mac's chief operating officer said in a statement "that all homeowners should be able to voluntarily choose the mortgage dispute resolution option they believe to be in their best interests."<sup>2</sup>

After the 2008 financial crisis, caused primarily by toxic mortgages and abusive lending practices, Congress prohibited arbitration clauses outright in home loans. As part of its implementation of the Dodd-Frank Act, the Bureau issued a rule, which became effective last year, implementing this requirement to prohibit mandatory arbitration from mortgage loan agreements.<sup>3</sup> Thanks to the restoration of mortgage borrowers' legal rights, borrowers have been able to have their day in court. Indeed, in January 2015, a Mississippi federal court recently struck down an attempt by a lender to enforce an arbitration clause in a mortgage loan.<sup>4</sup>

As the first CFPB study demonstrated, arbitration provisions are also tantamount to class action bans.<sup>5</sup> For mortgage borrowers, the class action device has addressed systemic widespread misconduct across the country, including unfair, unlawful and deceptive business practices in handling and servicing of residential mortgage loans.<sup>6</sup> Class actions also have provided homeowners with injunctive remedies, preventing more predatory practices by lenders. All consumers should benefit from the ability to join together in a class, the same way homeowners can.

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<sup>1</sup> See, e.g., *Anders v. Hometown Mortg. Services, Inc.*, 346 F.3d 1024 (11<sup>th</sup> Cir. 2003) (compelling arbitration on TILA and RESPA claims); Ronald H. Silverman, *Toward Curing Predatory Lending*, 122 *Banking L.J.* 483 nn.86-94 and accompanying text (2005) (detailing harms caused by mandatory mortgage arbitration).

<sup>2</sup> *Freddie Mac Promotes Consumer Choice With New Subprime Mortgage Arbitration Policy*, 2004, <http://prn.to/1zeQbw9>.

<sup>3</sup> 12 C.F.R. § 1026.36(h).

<sup>4</sup> *Richards v. Gibson*, 2015 WL 403050 (S.D. Miss. Jan. 29, 2015). The borrower had taken out a home loan secured by her mortgage. She brought suit against the lender alleging "state and federal claims regarding the handling of her loan and ultimate foreclosure (of her home)." The lender attempted to compel arbitration of the dispute, relying on an arbitration clause in the loan documents. But the district court, citing the new regulations under the Truth in Lending Act, denied the lender's motion, permitting the homeowner to pursue her claims in court. *Id* at 3.

<sup>5</sup> Consumer Financial Protection Bureau, *Arbitration Study Preliminary Results* (Dec. 13, 2013) at 13. *AT&T Mobility LLC v. Concepcion* greatly strengthened the ability to ban class proceedings through arbitration. 131 S. Ct. 1740 (2011).

<sup>6</sup> See, *Curry v. Fairbanks Capital Corp.* and *Sonoda v. Amerisave Mortgage Corporation*, (2012), Case No. C 11-01803 EMC N (N.D. Cal.).

Again, we urge the CFPB to expand the prohibitions of mandatory arbitration clauses to all consumer products under its jurisdiction. Homeowners are also consumers of credit cards, checking accounts, student loans, prepaid cards and other financial products. They face similar challenges across these sectors and should be able to seek remedies in court for harm regardless of the financial product or service at issue. The Bureau has a unique opportunity to apply the policy prohibiting mandatory arbitration to all lending products and related services.

Thank you for your consideration.

Sincerely,

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